

**PROVIDER REIMBURSEMENT REVIEW BOARD
HEARING DECISION**

ON THE RECORD
2000-D89

PROVIDER -
Hess Memorial Hospital
Mauston, WI

Provider No. 52-0109

vs.

INTERMEDIARY -
United Government Services/ Blue Cross
Blue Shield Association

DATE OF HEARING-

September 21, 2000

Cost Reporting Period Ended -
September 30, 1995

CASE NO. 97-2390

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ISSUE:

Were the Intermediary's adjustments offsetting investment income related to the sale of HMO stock proper?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Hess Memorial Hospital (AProvider@) is a Medicare-certified hospital located in Mauston, Wisconsin. On March 10, 1997, United Government Services (AIntermediary@) issued a Notice of Program Reimbursement (ANPR@) for the Provider's fiscal year ended (AFYE@) September 30, 1995. Pursuant to audit adjustments 12A and 21, the Intermediary offset the gain on the sale of Health Maintenance Organization (AHMO@) stock in HMO-Wisconsin against capital expense on worksheet A-8. The Intermediary made a corresponding adjustment on worksheet A-7.

The Provider's position is that the sale of the HMO stock was not a normal investment transaction. The amount of the sale, \$211,222, was not a gain but a small offset of the discounts afforded the HMO since its establishment in 1984. A group of hospitals contributed capital to fund the initial operations of HMO-Wisconsin and agreed to per diem contracts and outpatient fee schedules at reimbursement levels which were substantially below charges. Between the inception of HMO-Wisconsin and its sale to Blue Cross Blue Shield United of Wisconsin in December 1994, the Provider discounted its charges by \$1,229,444. Since this appeal covers FYE 1995, it does not include the effect of a requirement of the sale of the HMO which is similar to the previous arrangement. Under this agreement, the Provider was also paid substantially less than its charges.

The Provider appealed the Intermediary's adjustments to the Provider Reimbursement Review Board (ABoard@) on May 14, 1997. The Provider's appeal has met the jurisdictional requirements of 42 C.F.R. ' ' 405.1835 - .1837 and .1841. The other issue in the Provider's original hearing request pertaining to settlement data was not addressed in the Provider's position paper. The reimbursement effect of the disputed adjustments is \$12,826. The Provider is represented by James S. Ehasz, Vice-President - Finance. The Intermediary is represented by Bernard M. Talbert, Esq., Associate Counsel, Blue Cross Blue Shield Association.

PROVIDER'S CONTENTIONS:

The Provider contends that the Intermediary's reliance on Provider Reimbursement Manual, HCFA Pub. 15-1 (AHCFA Pub. 15-1") ' 202.2 in making the disputed adjustments is misguided. This section deals with gains and losses from the disposal of assets used for the production of income in the ordinary course of business. The Provider's involvement in HMO-Wisconsin was not, however, the type of investment covered by this section. The Provider was servicing the HMO's subscribers at a huge discount to enable managed care to exist in a rural area. None of the transactions related to the formation or sale of the HMO were undertaken in the ordinary course of business. The Provider also

points out that the purchaser of the HMO is the controlling entity of the Intermediary making the adjustments.

The Provider argues that the Intermediary's use of HCFA Pub. 15-1, ' 2103, pertaining to the prudent buyer principle, does not apply in this case. This section was established so Medicare would not pay more than a fair price for items or services provided to Medicare beneficiaries. The prudent buyer principle, thus, pertains to not paying more than the going price for an item or service. There is no item or service purchased in contracting with an HMO to provide services. The Intermediary is seeking to take this section of the manual out of context and apply it to an unrelated transaction.

INTERMEDIARY'S CONTENTIONS:

The Intermediary contends that the gain from the sale of the HMO stock qualifies as provider investment income. The Intermediary bases its argument on the manual provision that states:

Investments in Unrelated Organizations - Investment income arising from the investment of funds generated from a provider's own patient care activities in unrelated providers or nonpatient care activities, corporations (including the purchase of stock), partnerships, etc., consists of the aggregate net amount realized from dividends, interest, net rental income, interest earned in temporary investment of withholding taxes, *as well as all gains and losses realized from the disposal of assets used for the production of income in the ordinary course of business* [sic]. If the next [sic] amount realized is a loss, the loss is not allowable. Any profit is treated as investment income and must be offset against interest expense in the same cost reporting period.¹

HCFA Pub. 15-1 ' 202.2. (Emphasis added).

The Intermediary maintains that the principle of ~~A~~necessary interest expense also requires the offset of

¹ The correct language of cited section of HCFA Pub. 15-1 ' 202.2(C)(1) is as follows:

Investments in Unrelated Organizations -- Investment income arising from the investment of funds generated from a provider's own patient care activities in unrelated providers or nonpatient care activities, corporations (including the purchase of stock), partnerships, etc., consists of the aggregate net amount realized from dividends, interest, net rental income, interest earned in temporary investment of withholding taxes, as well as all gains and losses except gains or losses realized from disposal of assets used for the production of income in the ordinary course of business. If the aggregate net amount realized is a loss, the loss is not allowable. Any profit is treated as investment income and must be offset against interest expense in the same cost reporting period. . . .

such monies against interest expense. Under this principle, only interest expense that is necessary is an allowable cost. To be considered necessary, the interest must be:

- Incurred on a loan that is made to satisfy a financial need,
- For a purpose related to patient care, and
- *Incurred on a loan that is reduced by investment income.*

Id. (Emphasis added).

The Intermediary further argues that the Provider entered into the original contract as a prudent buyer as required by Medicare law and regulations. Therefore, any discounts that were agreed upon were made in the capacity of a prudent person who felt that the contract was satisfactory to all parties involved. If the parties did not consider the terms agreeable, they should never have finalized the contract.

The Intermediary also states that it is aware that the Provider felt the discounts necessary to establish an HMO in a rural area. While it can sympathize with this reasoning, the Medicare law and regulations make no exceptions to cover such situations.

CITATION OF LAW, REGULATIONS & PROGRAM INSTRUCTIONS:

1. Regulations - 42 C.F.R.
 - ' 405.1835 - .1837 and .1841 - Board Jurisdiction
 - ' 413.153(b)(2)(iii) - Interest Expense
2. Program Instructions-Provider Reimbursement Manual, Part I (HCFA Pub. 15-1)
 - ' 202.2 - Investments in Unrelated Organizations
 - ' 2103 - Prudent Buyer

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after considering the law, regulations, program instructions, facts, parties= contentions, and evidence finds and concludes as follows. There was an investment to fund the operations of an HMO. Provider funds were utilized to initially capitalize this investment, and there is no evidence in the record to the contrary. The Board finds that there was a sale of stock and a gain on the transaction, and that regulation 42 C.F.R. ' 413.153 (b)(2)(iii) applies.

The Board further finds that the Provider=s discounts were voluntary, and that the Provider=s contractual obligation to discount its services was independent of the purchase of the HMO stock. The Provider

presented no regulatory authority to support its argument. Indeed, the Board finds a paucity of Provider evidence, and further finds that the provider has not met its burden of proof.

DECISION AND ORDER:

The Intermediary adjustment was proper. The Intermediary's adjustment is affirmed.

BOARD MEMBERS PARTICIPATING:

Irvin W. Kues
Henry C. Wessman, Esquire
Martin W. Hoover, Jr., Esquire
Charles R. Barker
Stanley J. Sokolove

Date of Decision: September 27, 2000

FOR THE BOARD:

Irvin W. Kues
Chairman